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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GABRIEL WECHTER, ERIC PULSIPHER,
and MAX C. KNEES

Appeal 2009-010988
Application 10/667,862
Technology Center 2400

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD,
and MARC S. HOFF, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-27, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates network management and to a system and method for determining a scalability threshold of a network manager based on the gathered information about the network and the network manager (Spec. ¶ [0004]).

Claim 1, which is illustrative of the invention, reads as follows:

1. A method of determining a network management scalability threshold of a network manager with respect to a network, comprising:
 - gathering information about the network;
 - gathering information about the network manager; and
 - determining a maximum size threshold of a zone in the network based on the gathered network information and the gathered network manager information.

The Examiner's Rejection

Claims 1-27 stand rejected under 35 U.S.C. § 102(e) as anticipated by Black (U.S. Patent 7,143,153 B1, issued Nov. 28, 2006, and filed Nov. 21, 2000).

Appellants' Contentions

With respect to claim 1, Appellants contend that the Examiner erred in rejecting the claim as anticipated by Black because the reference does not teach the recited steps of "gathering information about the network manager" and "determining a maximum size threshold of a zone in the network" (App. Br. 4). Appellants specifically assert that Black, in the portions cited by the Examiner, "discloses a network management system (NMS) that receives information about network devices" and cannot be considered to teach the disputed gathering step (App. Br. 5). Appellants

further contend that the Examiner improperly relied on the “threshold” disclosed by Black as both the steps of gathering information and determining the maximum threshold (App. Br. 5-6).

Appellants challenge the rejection of independent claims 10 and 19 based on the same reasons presented for claim 1, and argue the patentability of all the dependent claims based on their dependence from claims 1, 10, and 19 (App. Br. 6), allowing these claims to fall with claim 1.

ISSUE

Has the Examiner erred in rejecting the claims as being anticipated by Black because the reference does not teach the recited steps of “gathering information about the network manager” and “determining a maximum size threshold of a zone in the network,” as recited in claim 1?

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments that the Examiner has erred. We disagree with Appellants’ conclusions. We adopt as our own the findings and reasons set forth by the Examiner in the action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief. However, as outlined below, we highlight and address specific findings and arguments regarding claim 1 for emphasis.

We find that the Examiner properly relies on columns 1, 7, 12, 63, 67, and 68 of Black for disclosing the step of “gathering information about the network manager” (Ans. 8). In particular, Black provides for added flexibility in resource allocation by allowing the users to input new threshold

expressions in addition to selecting between various predefined threshold expressions (Abstract). While we agree that the network manager in Black receives information about a threshold event (*see, e.g.*, col. 67, ll. 40-66), the portions of Black in columns 67 and 68 describe a threshold dialog box that provides a mechanism for receiving a threshold expression from the user (col. 3, ll. 43-54; col. 4, ll. 1-19).

Further review of Black shows that the details of the threshold dialog box are described in the “Internal Dynamic Health Monitoring” section in columns 167 and 168. As such, resource allocation may be determined based on the inputted information and determination of the appropriate threshold size or attribute from the Dynamic Threshold table. Among the elements available for user selection are network resource and the network manager elements (*see* col. 63, ll. 29-35; col. 167, ll. 18-26).

In response, Appellants, instead of rebutting the Examiner’s explanation based on disclosure in columns 1, 7, 12, 63, 67, and 68 of Black, repeat (Reply Br. 2) the same arguments presented in the Appeal Brief. As stated above, Black configures and manages the system based on the received management data and the information related to each system wherein the specific resource allocation threshold is determined using the threshold dialog box (*see* discussion of columns 63 and 167 *supra.*). Accordingly, we conclude that the portions of Black the Examiner relied on adequately disclose the steps of “gathering information about the network manager” and “determining a maximum size threshold of a zone in the network,” as recited in claim 1.

CONCLUSION

On the record before us, we conclude that, because Black teaches all the claim limitations, the Examiner has not erred in rejecting claim 1 as being anticipated by Black. Therefore, we sustain the rejection of claim 1 and of claims 2-27 falling therewith.

DECISION

The decision of the Examiner rejecting claims 1-27 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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